

## CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Olas Carayannis	Team: Squad #12	CCRB Case #: 201504669	<input type="checkbox"/> Force	<input checked="" type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Tuesday, 06/09/2015 2:00 AM	Location of Incident: § 87(2)(b)	Precinct: 47	18 Mo. SOL 12/9/2016	EO SOL 12/9/2016	
Date/Time CV Reported Tue, 06/09/2015 1:09 PM	CV Reported At: CCRB	How CV Reported: Phone	Date/Time Received at CCRB Tue, 06/09/2015 1:09 PM		

Complainant/Victim	Type	Home Address
§ 87(2)(b)	§ 87(2)(b)	§ 87(2)(b)
§ 87(2)(b)	§ 87(2)(b)	§ 87(2)(b)

Witness(es)	Home Address
§ 87(2)(b)	§ 87(2)(b)
§ 87(2)(b)	§ 87(2)(b)

Subject Officer(s)	Shield	TaxID	Command
1. SGT Jose Santory	5457	941398	047 PCT
2. POM Ryan Lenahan	10369	956043	047 PCT

Officer(s)	Allegation	Investigator Recommendation
A.SGT Jose Santory	Discourtesy: PO Jose Santory spoke discourteously to § 87(2)(b) and § 87(2)(b)	§ 87(2)(b)
B.SGT Jose Santory	Abuse: PO Jose Santory stopped § 87(2)(b) and § 87(2)(b)	§ 87(2)(b)
C.SGT Jose Santory	Abuse: PO Jose Santory frisked § 87(2)(b)	§ 87(2)(b)
D.SGT Jose Santory	Abuse: PO Jose Santory searched § 87(2)(b)	§ 87(2)(b)
E.SGT Jose Santory	Abuse: PO Jose Santory frisked § 87(2)(b)	§ 87(2)(b)
F.SGT Jose Santory	Abuse: PO Jose Santory searched § 87(2)(b)	§ 87(2)(b)
G.SGT Jose Santory	Abuse: PO Jose Santory searched the vehicle in which § 87(2)(b) and § 87(2)(b) were occupants.	§ 87(2)(b)
H.SGT Jose Santory	Abuse: PO Jose Santory refused to provide his name and shield number to § 87(2)(b)	§ 87(2)(b)
I.SGT Jose Santory	Abuse: PO Jose Santory threatened to arrest § 87(2)(b)	§ 87(2)(b)
§ 87(2)(g), § 87(4-b)	§ 87(2)(b)	§ 87(2)(b)
§ 87(2)(g), § 87(4-b)	§ 87(2)(b)	§ 87(2)(b)
§ 87(2)(g), § 87(4-b)	§ 87(2)(b)	§ 87(2)(b)

### Case Summary

On June 9, 2015, at approximately 2:00 a.m., § 87(2)(b) and § 87(2)(b) s co-worker, were inside of § 87(2)(b) s white Toyota 4Runner in front of § 87(2)(b),” located at § 87(2)(b) in the Bronx. When they stepped out of the vehicle to walk into “§ 87(2)(b),” where § 87(2)(b) works, a marked police van pulled up. PO Jose Santory and PO Ryan Lenahan, both assigned to the 47<sup>th</sup> Precinct, approached § 87(2)(b) and § 87(2)(b). Since the date of incident, PO Santory has been promoted to sergeant and is assigned to PSA7. He will be referred to by his rank at the time of the incident throughout this report. PO Santory said, “Hey, where the fuck are you guys going?” and “Where the fuck are you going” (**Allegation A**). PO Santory told § 87(2)(b) and § 87(2)(b) to sit on the stoop of § 87(2)(b), which they did (**Allegation B**). PO Santory asked § 87(2)(b) if he could search him and § 87(2)(b) responded that he could. PO Santory frisked and searched § 87(2)(b) (**Allegation C and D**). PO Santory frisked § 87(2)(b) (**Allegation E**). He requested the keys to § 87(2)(b) s vehicle and § 87(2)(b) refused. PO Santory removed the keys from § 87(2)(b) s pocket (**Allegation F**). PO Santory unlocked § 87(2)(b) s vehicle, entered, and searched the driver’s side, the passenger side, and the back seat (**Allegation G**). § 87(2)(b) asked the officers if he needed a warrant to search the vehicle and PO Santory said, “I don’t need a warrant for shit” (**Allegation A**). § 87(2)(b) asked for PO Santory’s name and shield, to which PO Santory responded, “No. Fuck you” (**Allegation A and Allegation H**). PO Santory told § 87(2)(b) that he was not allowed to drive the vehicle or he would be arrested (**Allegation I**). § 87(2)(b) and § 87(2)(b) were released without a summons or arrest. § 87(2)(g), § 87(4-b)

§ 87(2)(b) was uncooperative with the investigation.

§ 87(2)(g), § 87(2)(b)

This case was originally assigned to Investigator Maxwell Jaffe and was reassigned to Investigator Nicholas Carayannis on August 7, 2015.

This case is older than 90 days following § 87(2)(g)

Video surveillance footage of the incident, without audio was obtained by the investigation (Board Review 10 for the transcription and see below for the video).



2015-11-10\_12-52-11.mp4

### Mediation, Civil and Criminal Histories

- § 87(2)(b) rejected mediation.
- As of August 31, 2015, § 87(2)(b) has not filed a Notice of Claim with the City of New York (Board Review 05). On November 19, 2015, a follow up FOIL request was made and to date, the Office of the Comptroller has not fulfilled this request.

- [§ 87(2)(b)] [§§ 86(1)(3)&(4)] [§ 87(2)(c)]

### **Civilian and Officer CCRB Histories**

- This is the first CCRB complaint to which [§ 87(2)(b)] has been a party (Board Review 03).
- [§ 87(2)(b)] was uncooperative with the investigation and he did not provide his date of birth. As a result [§ 87(2)(b)]'s CCRB cannot be reliably located, given the relative degree of commonality of his name (Board Review 04).
- PO Santory has been a member of service for nine years and has had one substantiated CCRB allegation for Offensive Language-Gender, which the NYPD declined to prosecute. PO Santory has been the subject of 10 CCRB complaints with 32 allegations pled against him, [§ 87(2)(g)].
- PO Lenahan has been a member of service for one year and this is the first CCRB complaint to which he was a subject.

### **Findings and Recommendation**

#### **Explanation of officer identification**

PO Santory was assigned as the “impact mentor,” which he described as a field training officer. PO Lenahan had approximately one year of service at the time of the incident. PO Lenahan stated that it was PO Santory’s decision to stop the individuals. [§ 87(2)(g)]

**Allegation A—Discourtesy: PO Jose Santory spoke discourteously to [§ 87(2)(b)] and [§ 87(2)(b)]**

**Allegation H—Abuse of Authority: PO Jose Santory refused to provide his name and shield number to [§ 87(2)(b)]**

[§ 87(2)(b)] (Board Review 17) alleged that when PO Santory approached he stated, “Hey, where the fuck are you guys going?” and “Where the fuck are you going?” [§ 87(2)(b)] further alleged that when he asked PO Santory if he needed a warrant to search his vehicle, PO Santory stated, “I don’t need a warrant for shit.” [§ 87(2)(b)] also alleged that when he asked for PO Santory’s name and shield number, PO Santory responded, “No, fuck you.” [§ 87(2)(b)] did not provide a statement and none of the other witnesses were present to corroborate these allegations.

PO Santory (Board Review 18) and PO Lenahan (Board Review 19) both deny ever using profanity or hearing any officer use profanity when speaking with [§ 87(2)(b)] and [§ 87(2)(b)]. PO Santory and PO Lenahan both denied ever hearing [§ 87(2)(b)] request their name and shield number and they both denied ever refusing to provide that information.

[§ 87(2)(g)]

**Allegation B—Abuse of Authority: PO Jose Santory stopped § 87(2)(b) and § 87(2)(b)**

**Allegation C—Abuse of Authority: PO Jose Santory frisked § 87(2)(b)**

**Allegation D—Abuse of Authority: PO Jose Santory searched § 87(2)(b)**

**Allegation G—Abuse of Authority: PO Jose Santory searched the vehicle in which § 87(2)(b) and § 87(2)(b) were occupants.**

It is undisputed that § 87(2)(b) and § 87(2)(b) exited their vehicle, shut the doors, and locked the vehicle when PO Santory drove up in the marked van. It is undisputed that PO Santory approached § 87(2)(b) and § 87(2)(b) and told them to sit on the stairs and that PO Santory frisked and searched § 87(2)(b). It is undisputed that PO Santory searched § 87(2)(b)'s vehicle after § 87(2)(b) told him that he did not provide consent. It is not disputed that § 87(2)(b) and § 87(2)(b) were not summonsed or arrested.

The video shows that PO Santory parked the marked van that he was driving so that the lights were shining directly at § 87(2)(b)'s vehicle. The video evidence shows that PO Santory walked in front of § 87(2)(b)'s vehicle from the passenger side to the driver's side prior to approaching § 87(2)(b) and § 87(2)(b) who were standing on the sidewalk. § 87(2)(b) and § 87(2)(b) then walk to a building and sit on the stairs. PO Lenahan is depicted approaching § 87(2)(b)'s vehicle from the passenger side of the marked van to the driver's side of § 87(2)(b)'s vehicle. PO Lenahan is depicted looking into the window of the van from the driver's side door after § 87(2)(b) and § 87(2)(b) sit on the sidewalk. PO Santory is depicted frisking § 87(2)(b). The video is unclear as whether or not PO Santory enters § 87(2)(b)'s pockets. PO Santory then frisks § 87(2)(b) (see below) and then walks to § 87(2)(b)'s vehicle and attempts to open the door unsuccessfully. The video depicts PO Santory walking back over to § 87(2)(b) taking something from his waist area, and returning to the vehicle. PO Santory then opens and enters the vehicle from the front driver's side door, the front passenger side door, and the rear passenger side door.

§ 87(2)(b) (Board Review 17) stated that PO Santory questioned him and § 87(2)(b) about cocaine use. § 87(2)(b) denied cocaine use. PO Santory asked § 87(2)(b) if he could search him, and § 87(2)(b) consented to PO Santory searching him. PO Santory frisked and searched § 87(2)(b).

PO Santory (Board Review 18) stated that the area is known for a high occurrence of drugs and prostitution. The street had numerous parked vehicles, but not many pedestrians on the night of the incident. PO Santory's attention was drawn to § 87(2)(b)'s vehicle because it had out of state plates and because it was parked on the corner. PO Santory had observed the vehicle parked earlier in the night when the two males were not inside. When he pulled up to § 87(2)(b)'s vehicle at the time of the incident, he observed § 87(2)(b) and § 87(2)(b) inside the vehicle. He stated that they were reaching around the vehicle, but he could not see what they were doing. § 87(2)(b) and § 87(2)(b) exited the vehicle and PO Santory stopped the van. PO Santory suspected that § 87(2)(b) and § 87(2)(b) could have been involved in a drug transaction or prostitution. He believed this because they were inside of § 87(2)(b)'s parked vehicle, late at night, on a street known for drugs and prostitution. As he approached § 87(2)(b) and § 87(2)(b) he walked by the vehicle and observed a partially rolled marijuana cigarette on the passenger side floor board. The passenger side window was partially open and PO Santory could smell marijuana. He was unable to tell if it was burnt or unburnt marijuana. The marijuana cigarette looked as though § 87(2)(b) and § 87(2)(b) were in the process of rolling it and they dropped it when the officers pulled around the corner. PO Santory also

observed a straw that had been cut at an angle sitting on the center console. In PO Santory's experience, straws cut in this way are typically used for the insufflation of cocaine. PO Santory could not recall if he frisked or searched § 87(2)(b). PO Santory had not made up his mind at this point if he was going to arrest § 87(2)(b) and § 87(2)(b) or not. § 87(2)(b) appeared intoxicated on cocaine. He believed this because § 87(2)(b) had glassy eyes and appeared to be nervous and jittery. § 87(2)(b) was also uncooperative with PO Santory, responding PO Santory's statement that he observed marijuana and cocaine by denying it. PO Santory searched § 87(2)(b)'s vehicle. In the backseat was a kitchen knife which could have been illegal had they not been using it for food preparation or some similar legitimate use. Outside of the marijuana, the straw, and the knife, PO Santory did not find any additional contraband. PO Santory decided not to arrest or voucher the evidence as it was a relatively low level offense.

PO Lenahan (Board Review 19) stated that he did not see § 87(2)(b) and § 87(2)(b) prior to when they exited the vehicle and he did not suspect them of any crime at that point. The decision to approach § 87(2)(b) and § 87(2)(b) was made by PO Santory. PO Lenahan stated that when he approached them he looked into the vehicle from the passenger side and observed a partially rolled marijuana cigarette on the passenger seat and an opaque straw from a McDonald's restaurant that was cut to three or four inches long at an angle and which in his experience was used for the insufflation of cocaine. PO Lenahan also smelled unburnt marijuana. PO Lenahan was shown the surveillance video which did not show him on the passenger side of § 87(2)(b)'s vehicle. PO Lenahan was unable to say when, in the video, he made this observation. PO Lenahan told PO Santory of what he observed, but PO Santory did not say whether he made the same observation. PO Lenahan did not see PO Santory frisk or search either of the individuals and he did not hear what they said. PO Lenahan knew the PO Santory searched the vehicle, but he did not see where and he did not know if any additional contraband was discovered. He did not know why PO Santory decided not to arrest § 87(2)(b) and § 87(2)(b).

§ 87(2)(g)

People v. DeBour 40 N.Y.2d 210, 215 (1976) (Board Review 15) An officer must have founded suspicion of criminality to ask incriminating questions and reasonable suspicion to stop an individual.

People v Galak 81 N.Y.2d 463 (1993) (Board Review 09) An officer can search a vehicle if they have probable cause to believe that the vehicle contains additional contraband and there is nexus between this contraband and the arrest of the individuals.

People v Robinson 103 A.D.3d 421 (2013) (Board Review 11) The odor of marijuana during a vehicle stop provides an officer probable cause to search the vehicle.

People v Gambino 984 N.Y.S. 2d 633 (2014) (Board Review 08) The smell of PCP, because of its distinct odor, gives officers probable cause to search a parked vehicle.

People v Newman 96 A.D.3d 34 (2012) (Board Review 07) An officer can search a vehicle if there is a substantial likelihood of a weapon being present and it poses an "actual and specific danger" to the officer's safety.

§ 87(2)(g)

[REDACTED]

**Allegation E—Abuse of Authority: PO Jose Santory frisked § 87(2)(b)**

It is undisputed that § 87(2)(b) exited his parked vehicle when officers walked up. It is undisputed that § 87(2)(b) was frisked.

The video evidence shows PO Santory frisk § 87(2)(b)'s pockets, legs, and waistband. The video is not of good enough quality or closeness to show a bulge. The video does not depict § 87(2)(b) as unsteady on his feet nor does it depict § 87(2)(b) reaching toward his pockets.

PO Santory (Board Review 18) stated that § 87(2)(b) was uncooperative throughout the incident, which he described as denying the allegations that PO Santory had observed narcotics paraphernalia in the vehicle. § 87(2)(b) appeared to be intoxicated because he had glassy eyes, dilated pupils, slurred speech, and he was nervous. PO Santory observed a small rectangular bulge in one of § 87(2)(b)'s pants pocket. PO Santory had not, at that point in the incident, decided whether § 87(2)(b) was under arrest. § 87(2)(b) was ultimately not arrested. PO Santory did not know what the bulge was, but he believed it could have been a weapon. PO Santory believed it could have been a knife, because some knives are rectangular in shape. There was nothing else about that bulge that made PO Santory believe that it was a knife. PO Santory frisked all of § 87(2)(b)'s pockets and the area around his waistband for his safety as he did not know what § 87(2)(b) could be carrying. PO Santory was not certain if he frisked anywhere else on § 87(2)(b). The bulge was not a hard object and he did place his hand in that pocket. He did not observe any other bulges. At this time, PO Santory believed that he had probable cause to arrest § 87(2)(b) owing to his alleged observation of marijuana.

PO Lenahan did not suspect § 87(2)(b) of any crime other than the marijuana and straw that he allegedly observed. PO Lenahan did not notice any signs of intoxication beyond that § 87(2)(b) and § 87(2)(b) had red eyes.

People v. DeBour 40 N.Y.2d 210, 215 (Board Review 15) Officers are permitted to frisk an individual when they have reasonable suspicion that the individual has a weapon.

People v. Forrest 77 A.D.3d 511 (App. Div. 1<sup>st</sup> Dep’t 2010) (Board Review 16) Suspicion that an individual has engaged in a drug transaction is an insufficient basis for frisking such person.

People v. Rodriguez 18 Misc. 3d 1124A (Board Review 16) A frisk must be limited in scope to the areas where the officer suspects a weapon may be located.

§ 87(2)(g)

**Allegation F—Abuse of Authority: PO Jose Santory searched** § 87(2)(b)

§ 87(2)(b) (Board Review 17) alleged that PO Santory removed his vehicle’s keys from his right front pocket. The keys were connected to a lanyard that PO Santory pulled to remove the keys from his pocket.

PO Santory (Board Review 18) acknowledged that he took § 87(2)(b)’s keys, but denied that the keys were ever inside of the pocket. He also denied ever entering any of § 87(2)(b)’s pockets. He could not recall exactly where the keys were, but the keys were not in § 87(2)(b) pocket.

PO Lenahan (Board Review 19) stated that he could not recall if PO Santory searched § 87(2)(b).

The video evidence is not detailed enough to confirm or disconfirm that PO Santory removed the keys from his pocket.

§ 87(2)(g)

**Allegation I—Abuse of Authority: PO Jose Santory threatened to arrest** § 87(2)(b)

§ 87(2)(b)

It is undisputed that PO Santory told § 87(2)(b) that he was not under arrest, but if PO Santory saw § 87(2)(b) driving his vehicle that he would be placed under arrest.

§ 87(2)(g)

§ 87(2)(g)

§ 87(4-b), § 87(2)(g)

Squad: 10

Investigator: \_\_\_\_\_ Nicholas Carayannis November 30, 2015  
Signature Print Date

Pod Leader: \_\_\_\_\_

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Title/Signature

Print

Date